

No. 14839

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**In the United States Court of Appeals  
for the Ninth Circuit**

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SOMIS LEMON ASSOCIATION, PETITIONER

*v.*

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

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ON PETITION FOR REVIEW AND REQUEST FOR ENFORCEMENT  
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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FILED

MAR -1 1956



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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## JURISDICTION

This case is before the Court upon the petition of Somis Lemon Association to review and set aside an order of the National Labor Relations Board (R. 70-72)<sup>1</sup> issued against petitioner on April 13, 1955, following the usual proceeding under Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*), hereafter called the Act. In its answer (R. 79-83) the Board has requested enforcement of its order. This Court has jurisdiction of the proceeding pursuant to Section 10 (e) and (f)

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<sup>1</sup> References to portions of the printed record are designated "R." Wherever in a series of references a semicolon appears, reference preceding the semicolon are to the Board's findings; succeeding references are to the supporting evidence.

of the Act, the unfair labor practices having occurred at petitioner's plant in Oxnard, California, within this judicial circuit. The Board's decision and order are reported in 112 NLRB No. 18.

### COUNTERSTATEMENT OF THE CASE

As more fully explained in the Board's brief (pp. 2-5) in No. 14840 on this Court's docket (*Santa Clara Lemon Association v. N. L. R. B.*), this is one of five cases before the Court in which the Board found that the employers, a group of independent non-profit co-operatives engaged in processing and packing of citrus fruit in Southern California,<sup>2</sup> each committed unfair labor practices by breaking off negotiations with the Union<sup>3</sup> which the Board certified as the representative of its employees, and also by unilaterally increasing wages. The evidentiary facts upon which the Board based its findings in this case may be summarized as follows:

#### I. The Board's findings of fact

##### A. The contract negotiations

Following a representation election held pursuant to a consent election agreement (R. 1-5) in which the Union won a majority of the votes of Somis' employees, the Board certified the Union as bargaining representative of Somis' employees on November 13, 1953 (R. 55; 9). Thereafter, beginning on De-

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<sup>2</sup> Petitioner, herein sometimes referred to as Somis, operates a packing plant in Oxnard, California, from which it ships a substantial amount of citrus fruit into interstate commerce (R. 55; 107-108). No jurisdictional issue is presented.

<sup>3</sup> United Fresh Fruit & Vegetable Workers Union, L. I. U. No. 78, CIO, herein called the Union.

ember 9, 1953, a series of four meetings were held between Somis and the Union for the purpose of negotiating a collective bargaining agreement (R. 56; 93-95, 98, 109, 112, 117, 122). At the first of these meetings the Union submitted a proposed written contract, the provisions of which became the basis for negotiation in all succeeding meetings (R. 56; 34-46, 111-112). During the course of these meetings, Somis submitted counterproposals with respect to some subjects, and the Union withdrew or modified its original demands as to other subjects (R. 56, 58-59; 46-48, 96, 98, 102, 119-120, 142-143). Tentative agreement was reached on proposals dealing with recognition and hours and the parties appeared to be fairly close to agreement with respect to other matters (R. 96, 102, 122, 128, 135-137, 149). The Union's request for a union shop provision, however, was flatly rejected by Somis, and disagreement also developed over the Union's seniority proposal and Somis' request that the family members of growers whose produce was handled at the plant be given job preference (R. 56; 95, 96-97, 114, 119-190).

At the fourth meeting, held on February 4, 1954, the Union made concessions from its original positions respecting both seniority and job preference for family member of growers, but Somis rejected the new proposals, and in turn offered a counterproposal with respect to union security which forbade any sort of compulsory unionism on the stated ground that "monopolistic Union practices will interfere with [Somis'] operations" (R. 56; 47-48, 98-99, 127). When the Union refused to incorporate this language



into a contract, Somis' principal spokesman, its attorney, stated that he "did not see any use in proceeding further," and, in answer to a direct question by the Union, indicated that Somis "was breaking off negotiations" (R. 56; 99, 126, 129, 152-153). The Union requested that the parties "simply put aside those subjects upon which [they] could not agree and . . . continue to search for an area of agreement in the other contract articles which we had not yet explored" (R. 56; 99). At that stage of the negotiations the parties had not yet reached serious discussion on many of the subjects contained in the Union's proposed contract, including wages, vacations, and working conditions (R. 59; 99-100, 140-141, 151). This suggestion was rejected, however, and the meeting ended (R. 56; 99, 152-153).

On February 19, 1954, the Union by a letter to Somis, requested "prompt resumption of negotiations," but Somis replied a week later that in view of the disagreement between the parties as to the union security and seniority issues "further discussions would be useless," and that no "good purpose would be served by continued bickering" (R. 56-57; 49-50). The Union wrote Somis a final letter on March 11, stating that it had "informed you several times that [it] would recommend compromise on both [the union shop and seniority] issues when [it] could advise [its] membership that [the parties] had reached an otherwise satisfactory agreement" (R. 57; 51). Again stressing "the willingness of the Union to compromise," the letter repeated the Union's

earlier request "that negotiations be resumed at the earliest possible time" (R. 57; 51-52). However, no further meetings were held (R. 56).

On March 8 and again on April 11, 1954, Somis increased wages in amounts ranging from 10 cents to 25 cents an hour, on both occasions without notifying or consulting the Union (R. 58; 103, 155).

**B. A majority of the employees attempt to revoke the authority of the Union to represent them**

On February 22, about two and a half weeks after Somis had terminated contract negotiations with the Union, a petition signed by a majority of Somis' employees was served on Somis' manager in which the employees stated that they did "not wish to be represented any longer by the Union" (R. 58; 24, 129). The petition named a committee of five employees whom Somis was requested to recognize as the employees' bargaining representative (R. 25).

Following receipt of the petition, Somis' manager checked the signatures contained thereon against a payroll, and, having satisfied himself that a majority of Somis' employees had in fact signed the document, referred the matter to Somis' attorney (R. 58; 130). The latter wrote the Union on April 8, 1954, that Somis would "recognize the petition to the extent required by law" (R. 53).

## **II. The Board's conclusions and order**

Upon the foregoing facts the Board concluded that Somis had violated Section 8 (a) (5) and (1) of the Act by breaking off negotiations with the Union,

by refusing further to deal with it, and by unilaterally granting a wage increase (R. 69-70). To remedy Somis' violations of the Act, the Board's order requires Somis to cease and desist from refusing to bargain with the Union, under its new name acquired upon affiliation with the Packinghouse Workers of America,<sup>4</sup> and from interfering with the efforts of the Union to represent its employees. Affirmatively, the Board's order requires Somis to bargain collectively with the Union, as presently affiliated, and to post appropriate notices (R. 70-72).

#### ARGUMENT

**The Board's findings that petitioner violated Section 8 (a) (5) and (1) of the Act and its order requiring petitioner to bargain with the Union as now affiliated are valid and proper**

Two of the contentions made by Somis are common ~~both~~ to the four other similar cases presently before the Court: (1) that the Union's affiliation with the Packinghouse Workers resulted in the formation of a new and different union from that certified by the Board, and that the Board's order is therefore invalid insofar as it requires Somis to bargain with the Union as now affiliated (Br. 5-6), and (2) that while the issue of Somis' obligation to bargain with the Union was being adjudicated following its refusal to meet further with the Union, and negotiations were thus in

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<sup>4</sup> As explained in the Board's brief (pp. 13-15) in No. 14840, to which we respectfully refer the Court for a full statement of the facts, the Union affiliated in July 1954, with the United Packinghouse Workers of America, CIO, and its certification as representative of Somis' employees was thereafter amended accordingly. See R. 29-35.



effect "suspended," it was warranted in increasing wages without consulting the Union (Br. 6-8). These contentions are fully discussed in the Board's brief in Case No. 14840. Accordingly, rather than repeat the same discussion here, we respectfully refer the Court to the Board's brief in No. 14840 (pp. 25-28) for a statement of the reasons why both contentions should be rejected.

A third contention made by Somis—that a genuine impasse had been reached at the meeting of February 4, 1954, in the bargaining between it and the Union which warranted termination of negotiations—must be appraised in the light of the particular facts of this case. A comparison, however, of the contract negotiations of this case with those in the *Oxnard* case, No. 14838, shows that they are substantially the same in detail, and identical in legal effect.

Thus here, as in *Oxnard*, when the employer broke off negotiations the parties had reached tentative agreement on some matters, were close to agreement on others, and had not even discussed many of the important provisions, including that dealing with wages, contained in the Union's proposed contract (*supra*, 4). In both cases the employer refused to continue negotiations because of disagreement with respect to one or two of the proposed clauses (*supra*, p. 4). And similarly, in both cases, the employers' refusal persisted in the face of the Union's suggestion that a basis for settlement be sought in other matters which had not been discussed, and even after the Union had written the employers that it was willing

to compromise its position on the matters in disagreement (*supra*, pp. 4-5).<sup>5</sup>

Accordingly, the initial question in both cases is whether the good faith bargaining requirements of the Act permit a party to break off contract negotiations on the ground that an impasse has been reached whenever there is an unresolved disagreement on a contract proposal, even though the parties have not yet discussed many of the subjects to be covered by their contract. Secondly and also common to both cases, is the question of whether one of the negotiating parties may continue to refuse to meet with the other on the ground that there has been an impasse in their discussions after the other has stated a willingness to compromise on the disputed subject. We show in our brief in the *Oxnard* case, No. 14838, that both questions must be answered in the negative; that a genuine impasse does not exist either where the parties have not explored a basis for agreement in undiscussed subject matter or where one of the parties has expressed a willingness to compromise a position that had earlier led to disagreement. Accordingly, we respectfully refer the Court to the Board's brief (pp. 7-11) in the *Oxnard* case, for a discussion of the reasons and authorities supporting the Board's conclusion in this case that Somis committed an unfair labor practice when it permanently discontinued contract negotiations with the Union.

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<sup>5</sup> Somis' assertion (Br. 13) that the Union "did not offer to recede from its demand for a Union shop clause" cannot be squared with the Union's letter to Somis of March 11, 1954, in which the Union expressly offered to compromise its position on this and other controversial issues. *Supra*, pp. 4-5.

## CONCLUSION

It is respectfully requested that the Board's order be enforced in full.

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FEBRUARY 1956.

